

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





76-1597

NO. 76-1597

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee

-VS-

HAROLD HANESWORTH,

Appellant

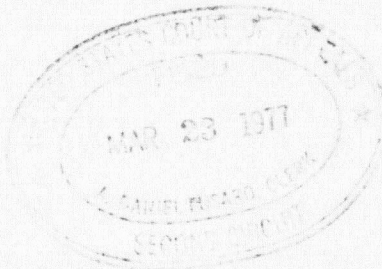
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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

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BRIEF AND APPENDIX ON BEHALF OF THE  
APPELLANT, HAROLD HANESWORTH.

---



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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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No. 76-1597

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UNITED STATES OF AMERICA,

-vs-

Appellee,

HAROLD HANESWORTH,

Appellant.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
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BRIEF ON BEHALF OF APPELLANT HAROLD HANESWORTH

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QUESTIONS PRESENTED

- 1) SINCE THE APPELLANT MET ALL THE REQUIREMENTS FOR SENTENCING UNDER THE NARCOTIC ADDICTS REHABILITATION ACT, COULD THE COURT ARBITRARILY DENY HIM ALTERNATIVE SENTENCING?
- 2) ASSUMING THAT THE RECORD WAS LACKING ENOUGH EVIDENCE TO SUPPORT A RATIONAL DETERMINATION OF WHETHER APPELLANT MET THE CRITERIA FOR ALTERNATIVE SENTENCING SHOULD THE JUDGE HAVE ORDERED AS REQUESTED AN EXAMINATION AS PROVIDED FOR BY NARA SO THAT A RATIONAL DECISION COULD BE MADE?
- 3) COULD THE COURT DENY APPELLANT ALTERNATIVE SENTENCING ARBITRARILY USING CRITERIA LACKING A RATIONAL NEXUS TO THE PURPOSE OF NARA?



CONSTITUTIONAL PROVISIONS

AMENDMENT [V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.



STATUTES INVOLVED

Title 21, United States Code Section 841(a)

§841. Prohibited acts A - Unlawful acts

a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally -

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

Penalties

b) Except as otherwise provided in Section 845 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a controlled substance in schedule I or II which is a narcotic drug, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than \$25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States



relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years a fine of not more than \$50,000 or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment. . . .

Title 18, United States Code, Section 4251

§4251. Definitions.

As used in this chapter --

(a) "Addict" means any individual who habitually uses any narcotic drug as defined in section 102(16) of the Controlled Substances Act, so as to endanger the public morals, health, safety, or welfare, or who is or has been so far addicted to the use of such narcotic drugs as to have lost the power of self-control with reference to his addiction. . . .

(c) "Treatment" includes confinement and treatment in an institution and under supervised aftercare in the community and includes, but is not limited to, medical, educational



social, psychological, and vocational services, corrective and preventive guidance and training, and other rehabilitative services designed to protect the public and benefit the addict by eliminating his dependence on addicting drugs, or by controlling his dependence, and his susceptibility to addiction.

Title 18 United States Code Section 4252.

§4252. Examination

If the Court believes that an eligible offender is an addict, it may place him in the custody of the Attorney General for an examination to determine whether he is an addict and is likely to be rehabilitated through treatment. The Attorney General shall report to the court within thirty days; or any additional period granted by the court, the results of such examination and make any recommendations he deems desirable. An offender shall receive full credit toward the service of his sentence for any time spent in custody of an examination.

Title United States Code Section 4253.

§4253. Commitment.

a) Following the examination provided for in section 4252, if the court determines that an eligible offender is an addict



rehabilitated through treatment, it shall commit him to the custody of the Attorney General for treatment under this chapter, except that no offender shall be committed under this chapter if the Attorney General certifies that adequate facilities or personnel for treatment are unavailable. Such commitment shall be for an indeterminate period of time not to exceed ten years, but in no event shall it exceed the maximum sentence that could otherwise have been imposed.

(b) If, following the examination provided for in section 4252, the court determines that an eligible offender is not an addict, or is an addict not likely to be rehabilitated through treatment, it shall impose such other sentence as may be authorized or required by law.



PRELIMINARY STATEMENT

Harold Hanesworth, the appellant, together with Simon Croom, were indicted in a one-count indictment with distributing approximately 4.71 grams gross weight of a substance containing heroin. The indictment charged that they violated Title 21 United States Code Section 841(a)(1) inasmuch as heroin is a controlled substance as set forth in Schedule I of Title 21 United States Code.

A Jury Trial was held before the Honorable Charles L. Brieant Jr. sitting by designation of the Chief Judge of the Second Circuit in the Western District of New York. The trial commenced on October 19th, 1976 and ended in a verdict of guilty as to both defendants on October 21, 1976.

On December 20, 1976, Harold Hanesworth was sentenced to four(4) years imprisonment with three (3) years special parole after service of the sentence of imprisonment pursuant to the penalty provisions of Title 21 United States Code Section 841(1)(A).

The defendant, Simon Croom, was placed on probation and is not a party to the instant appeal.

The Appellant is presently on bail pending appeal.

A Notice of Appeal was filed on December 20, 1976. The



Appellant is presently on bail pending appeal.

### STATEMENT OF FACTS

For the purposes of the issues raised in this Appeal, the relevant facts are not controverted and therefore, are set forth in summary fashion placing them in the view most favorable to the Appellee.

The events underlying this indictment occurred in the City of Buffalo on May 13th, 1975. (A. p.9 ) Marvin D. Marable an undercover New York State Police Officer working with the Drug Administration Task Force was designated as the "purchasing agent" (A.p. 10 ) in connection with a certain transaction involving Harold Hanesworth. Trooper Marable was introduced by an informant, Marvin Wilson, to Harold Hanesworth. (A.p. 10 )

Trooper Marable, together with Marvin Wilson, went to Harold Hanesworth's apartment at 203 Oakmont, Apartment 16 in the City of Buffalo, but Mr. Hanesworth was not present (A.pp.11 and 13). They proceeded to Clark's Club Venus on East Ferry and Scheule Streets in the City of Buffalo but could not locate him at said tavern. (A.p.15) They then returned to Mr. Hanesworth's apartment. (A.p.15). After meeting him there, they proceeded to follow Mr. Hanesworth to the residence of the co-defendant at the trial of the



instant indictment, Simon Croom, located at 332 Leroy Street, in the City of Buffalo. (A.p.17) Officer Marable testified as to a conversation between Harold Hanesworth and Simon Croom outside of 332 Leroy Street. (A.p.18). Trooper Marable's testimony was then that he, the Appellant, Simon Croom and the informant, Wilson, all left in Trooper Marable's car and proceeded to Schuele and East Ferry Street, the location of Clark's Club Venus. (A.p.19). Upon arrival at Clark's Club Venus, Trooper Marable testified that he paid \$350.00 to the Appellant in official advance funds (A.p.20), that he observed the Appellant Hanesworth hand Croom some folded money (A.p.21). In response to a question posed by Trooper Marable, Trooper Marable's testimony was that the Appellant was joining more money with his money so that he ". . . would get almost 3 bundles instead of 2 bundles." (A.pp. 22 and 23). Trooper Marable further testified that in response to a question posed by him and inquiring as to who had the dough that Simon Croom replies, "I do," and that everything was "Cool." (A.p.27). He further testified that Simon Croom handed Harold Hanesworth a tin-foil packet, (A.p.27) and that they proceeded back to Leroy Street (A.p.28) and then to the Appellant's apartment at 203 Oakmont (A.p. 29). When back



in the Appellant's apartment, they proceeded to his bedroom and Trooper Marable testified that the Appellant placed two pieces of tin foil on top of a record album and began spooning out the contraband into the two tin-foil packets giving him the slightly larger packet. (A.p.32, 33 and 34), retaining the other packet. Trooper Marable then left the Hanesworth Apartment.

With reference to the Appellant's addiction to narcotics the informant for the government, Marvin Wilson, acknowledged that he knew the Appellant ". . . from a previous conviction from being up in Macedon (sic) Park Rehabilitation Center." (A.p.35). The trial court's acknowledgment of Hanesworth's prior drug use is also reflected by the discussion held out of the presence of the Jury relating to the Appellant's prior record, (A.p.36 through 39) and further report acknowledged that Hanesworth was on a Methadone Maintenance Program (A.p.40).

At the time of sentencing, through counsel, the defendant specifically requested sentencing pursuant to Title 18 U.S.C. Chap.314). (Sentencing Minutes A.p.66). The Appellant through counsel, admitted to being an addict (Sentencing Minutes A.p.68) and he further admitted through counsel that

the drug retained was for his personal use. (Sentencing Minutes A.p.69). To confirm this, the defendant, through counsel, specifically requested an Examination pursuant to Section 4252 of Chapter 314 Title 18 in order to definitively determine whether or not he is an addict. The Court declined to do so (A.p.72) and focused on a prior conviction in May, 1972 which, although the Court ascribed to the fact it was a felony, upon examination of the FBI report relating to the Appellant and the applicable sections relating thereto at the time of the offense, it may not have been a felony. (A.p.72). While the Court acknowledged that he had been previously certified a heroin addict in 1967 and 1970 (Sentencing Minutes A.p.73) the Court sentenced the Appellant to a term of four (4) years imprisonment with a three-year special parole pursuant to Title 21 U.S.C. §841(1)(A) (A.p. 73).



POINT I

APPELLANT MEETS ALL CRITERIA FOR SENTENCING  
UNDER THE NARCOTICS ADDICT REHABILITATION  
ACT 18 U.S.C.(A) §4251 through 4255.

The broad purpose of Congress in enacting the Narcotic Addict Rehabilitation Act (NARA) as set forth in the Act itself, was:

"(T)hat certain persons charged with or convicted of violating Federal Criminal Laws, who are determined to be addicted to narcotic drugs, and likely to be rehabilitated through treatment should, in lieu of prosecution or sentencing, be civilly committed for confinement and treatment designed to effect their restoration to health and return to society as useful members." (42 USC(A) §3401).

See also, H.R.Rep. No.1486 89th Cong., 2d Sess., 7(1966).

As the United States Supreme Court stated in Marshall v. U.S., 414 US 417 at 423:

"Congress recognized that some relationship between drug addiction and crime probably existed, and concluded that prosecution and imprisonment of all addicts without more, would not cure addiction or retard the rising addiction rate, and that a rehabilitative rather than a purely penal approach to the problem was called for."

Thus, in designing the statute, Congress enumerated certain criteria which they felt would insure that a person not likely to be rehabilitated would be ineligible for the program. To that end, certain persons are excluded from the category of "eligible offenders." The only two requirements for treat-

ment under the statute are that the person be an eligible offender and that he be an addict. It is Appellant's contention that he meets both those requirements.

APPELLANT IS AN ADDICT WITHIN  
THE TERMS OF 18 U.S.C.A. §4251.

The facts in this case are such that Appellant's status as an addict cannot be questioned. During the sentencing procedure, Appellant admitted through counsel that he was an addict. (A.p.20) (See Sentencing Minutes, p.6) As the Court pointed out during the sentencing procedure (A.p.66 and 73) (Sentencing Minutes pp. 2 and 9) the Appellant has been twice certified as a heroin addict, once in 1969 and once in 1970. At the time of trial, the Appellant was on methadone maintenance on an out-patient basis and was unable to function (A.p.68) without receiving his medication. (Sentencing minutes p.4). Even in the face of all of this evidence, the Court did not feel that he could find the Appellant was an addict. (Sentencing Minutes p.9) While the Court did not indicate what evidence would be necessary for a determination that Appellant was an addict, the Appellant submits that the evidence in this case is overwhelming.

The various circumstances of the underlying transaction show that the Appellant was purchasing approximately one-half



(1/2) of the narcotics for his own use. (See Transcript A.p. 33, 34) with his own money. (See Transcript A.p.22 and 23) That fact, when combined with his prior certifications, cannot be ignored in determining his present status as an addict.

APPELLANT IS AN ELIGIBLE OFFENDER

The Congress excepted certain persons from the definition of "eligible offender." The Appellant does not fit within any of those categories.

The first exclusion is for an offender who is convicted of a crime of violence. The court expressly stated his belief in a rhetorical question that Appellant's prior conviction for possession of a sawed-off shotgun was a crime of violence. (A.p.69) (Sentencing Minutes p.5). However, crime of violence is defined in NARA 18 U.S.C.A. §4251(b) and neither possession of a sawed-off shotgun nor, in fact, possession of any weapon is considered a crime of violence under that Section.

The Section also excepts those convicted of selling a narcotic drug unless the sale was for the primary purpose of enabling the offender to obtain a drug which he requires for his personal use. As was stated above, Appellant kept approximately one-half (1/2) of the drugs obtained in the transaction for himself and, as he is an addict, it must be

inferred that the primary motive for his drug dealing was for his own personal need. Appellant cannot, therefore, be excluded from the NARA by the trafficking disqualification. In fact, it was the design of NARA to help individuals like Appellant who dealt in drugs as a means of supplying their own habits. Marshall v. U.S. at 423.

The third exception applies to the offender against whom there is pending a prior charge of a felony which is not yet finally determined, who is on probation or whose sentence is following conviction on such a charge has not been fully served. On this point, it can simply be noted that while there was, during the time of trial, a pending companion case based upon a similar event occurring the day before the transaction underlying the instant indictment, that companion case was dismissed by the Court at the time of sentencing. (Sentencing Minutes p.11). The final two exceptions did not apply in this case.

THE COURT SPECIFIED NO SPECIFIC EXCEPTION  
DISQUALIFYING APPELLANT.

The only exceptions specified in any manner by the Court was the prior conviction of a crime of violence, which as  
(A.p.69)  
shown above was not the case. (Sentencing Minutes p.5)



In the absence of the indication of another exception, it is impossible for a reviewing Court to determine whether Appellant was given a fair hearing on his eligibility for the NARA program. U.S. v. Gaines, 436 F.2d 150, at 154. If the Court did feel that the Appellant was disqualified, that should have been clearly articulated, so that the Court's reasons could be evaluated.

## POINT II

THE COURT'S REFUSAL TO ORDER AN EXAMINATION UNDER NARA (18USCA §4252) THE COURT'S CONSIDERATION OF IRRATIONAL FACTORS IN DETERMINING THAT APPELLANT WAS NOT ELIGIBLE FOR ALTERNATIVE SENTENCING WERE DENIALS OF DUE PROCESS UNDER THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

That the right arbitrarily denied the prisoner was an important one has been many times stated. As Justice Marshall forcefully demonstrated in his dissent in Marshall v. U.S., supra, the imposition of sentence at a Federal prison is tantamount to a denial of treatment.

"As the Government itself indicates in its brief, treatment begins immediately upon commitment under NARA, and the offender is eligible for conditional release on parole after 6 months of treatment. Addicts not committed under NARA, however, are not placed in any rehabilitation program until about one year before their anticipated release." (Marshall v. U.S., supra).

The inability of prisons to treat narcotic addicts has been amply documented:

"The commitment of addicts to correctional institutions should be discouraged; drug abuse treatment in an institutional setting has yielded little success." (National Advisory Committee on Criminal Justice Standards and Goals, Corrections Task Force Report, 373, 375 (1973).

In fact, the prison environment often facilitates drug use. The availability of drugs in prison involves inmates, staff, and visitors. (Bresolin v. Morris, 20 Cr.L.Rptr. 2395, Wash-



ington Sup.Ct. 1/7/77). The overwhelming consensus is that treatment programs in prisons have had virtually no success, and the only effective method of treatment is in a rehabilitative environment. National Adv. Comm.on Crim. Justice Standards and Goals, Corrections Task Force Report (1973), Community Crime Prevention Task Force Report (1973).

Just as Congress was required to design the disqualifications at a statute granting such a vital right in such a manner so that each disqualification bears a rational relationship to the purpose to be served by this statute, that is rehabilitation, so must the trial court, when denying a defendant the benefits of the statute make the denial based on reasons which bear a rational relationship to the purposes of the statute. In keeping with the above requirement, it is also necessary that the Court use all means at his disposal to determine if the offender is a person who is qualified for alternative sentencing. To not do so, constitutes an arbitrary denial of a very important benefit.

POINT A

UPON ALL THE EVIDENCE ADDUCED IN THIS  
CASE, THE COURT COULD REASONABLY FIND  
THAT THE DEFENDANT WAS AN ADDICT, AND  
IF SOME QUESTION DID REMAIN IN THE

COURT'S MIND AS TO HIS STATUS, THE  
APPELLANT WAS ENTITLED TO AN EXAMINA-  
TION TO DETERMINE WHETHER HE WAS AN  
ADDICT.

As is pointed out in POINT I, there was much evidence in this case pointing to the fact that Appellant was an addict, not the least of which was his use of some of his money to purchase heroin for himself at the same time the transaction underlying the indictment occurred. (Transcript A.p.23)

In the face of that and the other facts outlined above, the Court felt he was only able to say (A.p.73) (Sentencing Minutes p.9) that "he was not sure" that the Appellant was an addict.

Even assuming that a reasonable person could, in the face of the above mentioned evidence, be left with a doubt as to whether the Appellant was an addict, after the introduction of so much evidence pointing to the fact that he may be an addict, the Appellant was entitled to an Examination to determine whether he was an addict under 18 U.S.C.A. §4252. The Court stated (Sentencing Minutes p.9) in reference to a prior rehabilitation program, "whether it took you out off the street as a user or not, the Court is in no position to find." If the Court truly felt that he was in no position to find whether or not the Appellant was an addict, the Appellant surely had the right to have that point determined. An



Examination on this point would also determine if Appellant is disqualified under §4251(F)(3). While the Appellant, in this POINT is not arguing that he has a right to treatment simply because he is an addict, the Court had a duty to determine his status to have all the facts before him, before denying him the right to alternative sentencing to insure that such denial was not arbitrary.

POINT B

THE ONLY REASONS OTHER THAN DOUBTS CONCERNING THE APPELLANT'S ADDICTION STATED BY THE COURT TO SUPPORT A DENIAL OF NARA SENTENCING, LACK RATIONAL CONNECTIONS TO THE PURPOSE OF THE STATUTE.

The first reason stated by the Court for denying NARA treatment related to the prior conviction of possession of a sawed-off shotgun. It is already been demonstrated above, that that was not in conformance with the terms of the statute. It is also the case, however, that conviction of a non-violent, merely possessory, offense does not constitute a rational reason for the denial of alternative sentencing. As stated above, the reason Congress enacted the NARA was in recognition of the fact that those addicts who are capable of rehabilitation should be committed civilly to effect rehabilitation. The exclusions enunciated by



Congress were made on the basis that persons falling into those categories would not be susceptible to rehabilitation. It is certainly rational, as the Supreme Court has found in Marshall, supra, that a person with a history of felony convictions is less likely to be rehabilitated and can be rationally excluded from the provisions of this statute. Similarly, it can be said to be equally rational to exclude those convicted of a violent crime. It cannot, however, be said to be rational to exclude someone convicted of one prior non-violent offense. Even had it been a crime of violence, its inclusion in the determination of eligibility for NARA was not proper. It has been repeatedly held that the "crime of violence" disqualification refers only to the presently charged offense and not to prior convictions. U.S. v. Hamilton, 462 F.2d 1190, 1192 (1972) (D.C.Circ); Marshall v. U.S., 414 US 417 (1974).

If the Court could not have disqualified the Appellant from the program even upon a prior conviction of murder, rape, or kidnapping or one of the other enumerated offenses, it certainly cannot rationally disqualify him for a prior conviction of a non-violent crime.

The only other reason appearing on the face of the sentencing minutes which influenced the Court to deny NARA



treatment, appears to be the Appellant's failure to benefit from New York State Narcotic Addiction Control Commission's (NACC) program. The apparent failure of Appellant in the prior program cannot be considered determinative of his probability of success at the present time, several years later. As can be seen by reference to the defendant's Federal Bureau of Investigation record, while he was sentenced to the NACC Program on two occasions, once in 1969 and once in 1970, he could not have remained in the program for any protracted period of time since in 1972, he was sentenced to one-year imprisonment for the above mentioned possession of a sawed-off shotgun. At the time of Appellant's arrest, on the indictment within, it had then, at the very least, been a substantial period of time since his former commitment into an NACC program.

It is also not clear that the treatment Appellant received in the past under the NACC and that which he would receive in the Federal Program are sufficiently similar to be rational basis for comparison. It is possible that Appellant requires a long period of treatment on inpatient basis before any program can be successful. There is no evidence that he has ever undergone such treatment or program, or the State facilities are adequate for such a program.



Finally, it must be noted that a substantial period of time which has passed since his initial commitment in the State Program, the Appellant's motivation may have increased substantially. The Court failed to realize that individuals like Appellant whose lives have been scarred by narcotic addiction are often the most likely to benefit from treatment. The Director of the California program upon which NARA was to a great extent modeled stated that:

"Persons who have had as many as four or five previous convictions and have grown older in years respond to the program better than some of the younger persons earlier in their careers."

Civil Commitment and Treatment of Narcotic Addicts, Hearings Before Subcommittee No. 2 of the House Committee on the Judiciary 89th Congress, 1st and 2nd Session at 55 (1965).

#### CONCLUSION

In view of the lack of evidence on this matter, once again, in order to insure that the decision was not arbitrary, the Court should have taken advantage of the Examination section of NARA and procured a report on the Appellant's chances for rehabilitation, which most certainly would have detailed any prior treatments and evaluated what the success or failure of the prior program had been, and what, if anything that

about his chances for rehabilitation. Again, without such an Examination, the Court's decision was arbitrary, and a denial of due process.



CONCLUSION

THEREFORE, THE APPELLANT RESPECTFULLY REQUESTS  
THAT HE BE SENTENCED IN ACCORDANCE WITH THE  
NARCOTIC ADDICTS REHABILITATION ACT, OR, IN THE  
ALTERNATIVE, HIS CASE BE REMANDED FOR AN EXAMINA-  
TION IN ACCORDANCE WITH NARA TO DETERMINE IF HE  
MEETS THE REQUIREMENTS OF AN ALTERNATIVE  
SENTENCE.

Respectfully submitted,

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APPENDIX



IN THE DISTRICT COURT OF THE UNITED STATES

For the Western District of New York

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THE UNITED STATES OF AMERICA	)	MARCH 1975 SESSION
	)	(Impaneled May 27, 1975)
-vs-	)	No. 187
	)	Vio. T.21, U.S.C.,
HAROLD HANESWORTH and	)	§841(a)(1)
SIMON CROOM	)	
	)	

COUNT I

The Grand Jury Charges:

On or about the 13th day of May, 1975, in the Western District of New York, the defendants, HAROLD HANESWORTH and SIMON CROOM, did knowingly, intentionally and unlawfully distribute approximately 4.71 grams gross weight of a substance containing heroin, a Schedule I controlled substance as set forth in Title 21, United States Code, Section 812; all in violation of Title 21, United States Code, Section 841(a)(1).

Richard J. Arcara  
RICHARD J. ARCARA  
United States Attorney

A TRUE BILL:

Earl R. Dewy  
Foreman



DOCKET ENTRIES

UNITED STATES OF AMERICA

-vs-

CR 75-187

HAROLD HANESWORTH

---

<u>Date</u>	<u>Proceedings</u>
7/30/75	Filed Indictment
7/30/75	J.S. 2 made
7/30/75	Govt. requests a warrant of arrest to issue for defendant Croom. Motion granted.
7/31/75	Warrant issued for Defendant Croom.
8/11/75	Defendant Simon Croom being duly arraigned, enters a plea of not guilty to the indictment. Defendant is released on \$5,000 recog. bond.
8/11/75	Filed \$5,000 appearance (O.R.) bond
8/14/75	Defendant Harold Hanesworth appears for arraignment before Judge Elfvin; The Court enters a plea of not guilty. Bail is set at \$5,000.00 cash.
8/18/75	Filed warrant for Harold Hanesworth, executed 8/14/75 (filed in 75-186).
8/21/75	Defendant Hanesworth in person. Defendant requested assignment of counsel. Defendant released to Masten Park rehabilitation Center and bail continued at \$5,000.00.
8/21/75	Filed Cy.5 of CJA-20 - Order appointing James Renda, Esq. as counsel for Harold Hainesworth -- Maxwell, Mag. (Filed in 75-186)
9/8/75	Filed defendant Hainesworth's notice of motion for Bill of Particulars, etc. ret. 9/16/75-Mag.

<u>Date</u>	<u>Proceedings</u>
9/8/75	Filed defendant Hainesworth's notice of motion for discovery & inspection, etc. ret. 9/16/75 - Magistrate
9/9/75	Proceedings before the Magistrate - No appearance for defendants. Argument of motions on behalf of Hanesworth adj. at the request of Mr. Renda to 9/16/75. Attorney William Mahoney, Esq., has been substituted as attorney for defendant Croom as of August 29, 1975.
9/15/75	Filed deft. Croom's notice of motion for Bill of Particulars etc. ret. 9/23/75 - Magistrate
9/15/75	Filed deft. Croom's notice of motion for suppression of evidence disclosure and discovery, etc. ret. 9/23/75 - Magistrate
9/23/75	Filed Government's response to pre-trial motions filed by the deft. Harold Hanesworth.
9/23/75	Filed Government's response to pre-trial motions filed by the deft. Simon Croom.
9/23/75	<del>Proceedings before the Magistrate</del> - No appearance for deft. Croom; Atty. James Renda appeared for Deft. Hanesworth. Mr. Mahoney, Atty. for Croom, contacted the Court prior to Calendar and advised he has received some discovery from the Government and requires additional time to review the response. Adj. argument to Oct. 1, 1975 - 11:30 A.M. Mr. Renda joined in the request for adj. so that motions can be argued at the same time.
10/21/75	Filed deft. Hainesworth's notice of motion for a Suppl. Bill of Particulars, etc. ret. 10/28/75.
10/21/75	Proceedings before the Magistrate - Oral argument of defts discovery motions. Denied in part and granted in part. When the Govt. furnishes the material directed to furnish discovery is complete. Deft. Hanesworth released on \$5,000 appearance bond signed by mother and father.



<u>Date</u>	<u>Proceedings</u>
10/23/75	Filed \$5,000.00 - 3rd party custody bond for deft. Hanesworth.
10/29/75	Filed Govt's motion to move action ready for trial.
11/3/75	Status Report. Adj. to 11/17/75 for motions.
11/17/75	Return of Motions. Adj. to 12/1/75
12/1/75	Status report. Adj. to 12/75 for the filing of additional motions by defts.
12/22/75	Return date for motions. No motions filed. Ready for trial.
12/29/75	Status report. Court orders case placed on trial calendar.
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6/8/76	Pre-trial meeting held. Motion by deft. Croom for Inspection of grand jury minutes. Denied. Adj. 6/29/76 for pre-trial.
6/10/76	Filed Govt's Suppl. Discovery Response.
6/29/76	Pre-trial scheduled but not held. Jury Selection 8/9/76.
6/30/76	Filed cy. of letter dated 6/20/76 to Attys. Mahoney and Renda, from AUSA Edward Wagner re Jury selection scheduled for 8/9/76 (letter filed in 75-186).
10/8/76	Filed warrant for deft. Simon Croom, executed 8/11/75
10/19/76	Govt moves case ready for trial before Judge Charles L. Brieant, Jr., Visiting Judge, at Buffalo, New York whereupon the jury is duly empaneled.
10/20/76	Trial continues from yesterday with same appearances Witnesses testify for Govt.; Jury is excused. Mr. Renda for defendant Hanesworth, moves for dismissal

and for judgment of acquittal. Mr. Mahoney for  
deft. Croom, moves for judgment of acquittal.  
Govt. opposes. Motions denied. Trial continues.  
Trial is adj. until tomorrow.

- 10/21/76 Trial continues from yesterday with same appearances. The Jury retires to deliberate upon their verdict. The jury returns with the following verdict: Deft. Hanesworth - Guilty. Deft. Croom - Guilty. The Jury is excused. The Court directs full presentence reports are prepared. The Court directs the Deft. Croom to report to the probation officer tomorrow at 9:30 A.M. The deft. Croom moves to set aside the verdict. The Court will enlarge the time for the motion through the month of November. Bail is continued for deft. Croom. The deft. Hanesworth moves to set aside the verdict. Motion denied. The Government moves to have deft. Hanesworth's bail increased to \$10,000 cash or surety. Deft. Hanesworth opposes. The court fixes bail for deft. Hanesworth at \$10,000 cash or surety.
- 10/21/76 Filed Govt's request to charge.
- 10/21/76 Filed Deft. Croom's requests to charge
- 10/21/76 Filed Deft. Hanesworth's request to charge.
- 11/1/76 Filed subpoena - John Herritage, served 10/20/76
- 11/2/76 Filed subpoena - Marvin Marable 10/18/76
- 11/4/76 Filed \$10,000 surety bond (property) for deft. Harold Hanesworth -
- 11/10/76 Filed Govt's Trial Memorandum
- 12/20/76 Filed Deft. Croom's motion for a new trial with memorandum.
- 12/20/76 Filed Transcript of excerpts of testimony of Marvin D. Marable taken on 10/20/76.



Date

Proceedings

- 12/20/76 Deft. Croom is sentenced as follows: Fifteen Years in prison with three (3) years special parole; execution of sentence suspended, probation for five (5) years -- Brieant, J.
- 12/20/76 Deft. Hanesworth is sentenced as follows: Four (4) years in prison with three (3) years special parole after serving sentence. Brieant, J. Bail continued pending appeal.
- 12/20/76 Filed Deft. Hanesworth's Notice of Appeal.
- 12/20/76 Filed Judgment and Commitment for Deft. Hanesworth. Commitment issued. Brieant, J.
- 12/21/76 Filed Judgment and Order of Probation, Brieant, J.
- 12/21/76 Copy of Docket entries, Notice of Appeal, Form A and financial affidavit mailed to CCA.

M A R V I N D. M A R A B L E,

called as a witness by the Government, being first duly sworn,  
testified as follows:

DIRECT EXAMINATION

BY MR. WAGNER:

Q Mr. Marable, I would like you to tell the members of the jury what your present occupation is?

A I am a New York State Trooper.

Q Are you presently assigned to a particular area in New York State?

A Yes.

Q Where is that, sir?

A Troop K, Hawthorne.

Q What part of New York State is that?

THE COURT: Does it matter? It is not around here.

Q It is in the New York City area?

A Yes.

THE COURT: Westchester. Go ahead.

Q Were you working in Buffalo in May of 1975?

A Yes.

Q What was your occupation and duties at that time, sir?

A I was assigned as an undercover narcotics agent.

Q In the Buffalo area?

A Yes.

A-8



Q You were with the New York State Police at that time?

A Yes, sir.

Q And what particular assignment did you have, if you can recall, sir?

A On that particular day?

Q Well, were you working with other agencies at that time, sir?

A With the Drug Enforcement Administrative Task Force.

Q That was the Task Force composed of police officers and various agencies?

A Yes.

Q Mr. Marable, were you working in that position, sir, on May 13, 1975?

A Yes.

Q Did there come a time, sir, on May 13, 1975, that you met with your other agents to plan a possible sale of controlled substances?

A Yes.

THE COURT: Were you planning a sale?

Q Or were you planning to be involved in a possible sale, sir?

A Yes.

THE COURT: Were you planning a sale?

A To be involved in a sale.

THE COURT: Not a purchase?

A-9

A Well, yes, a purchase.

THE COURT: All right.

Q What was your role in the investigation, Mr. Marable?

A I was the purchasing agent.

Q Who else was with you when you had this meeting and made these plans, sir?

A Members of the Drug Enforcement Administrative Task Force.

Q Do you recall their names?

A Chief of the Task Force, Robert McCarthy; Special Agent David Lucier from the Task Force, and Investigator John Herritage from the New York State Police.

Q Mr. Marable, were there any people there at the meeting that were not police officers or members of a police agency?

A Yes.

Q Who was that, sir?

A It was Marvin Wilson. He was the informant.

Q Can you tell us what your role was in the investigation?

A My role was to meet people through the informant, to be introduced to people in the area, and to purchase heroin.

Q What was the informant's role, if you know?

A The informant's role was to introduce me to people in the area.

Q Did there come a time, sir, on the 13th of May, 1975, that you actually took some steps to consummate this pur-



chase of heroin by you as an undercover agent?

A Yes.

Q I would like you, sir, to explain to the jury what you did and the approximate times and places where you were and what happened?

A At approximately two p.m. on the 13th of May, 1975, the members of the Task Force and I, along with Marvin Wilson, the informant, had a meeting at the Drug Enforcement Administration Office, which is downstairs in this building, and we discussed the purchase of heroin from Harold Hanesworth. Two phone calls were placed, and as a result of the phone calls, the informant and I drove to 203 Oakmont, which is the residence of Harold Hanesworth.

MR. MAHONEY: If it please the Court, this is objected to insofar as the defendant Simon Croom is concerned.

THE COURT: Subject to connection as to Mr. Croom.

Members of the jury, I want you to keep very carefully separate in your minds what, if anything, Mr. Hanesworth did and what, if anything, Mr. Croom did, and also who was present and who was not present at the time that any event in this case occurred, because as I mentioned to you yesterday, you will be asked

to give separate verdicts as to each defendant and a person is responsible for his own acts. He is not responsible criminally for somebody else, so it is essential that you keep separate in your minds the participation of the two different defendants, as we go along with this case.

Q Mr. Marable, the other agents that were with you, do you know, sir, if they had a planned role in the investigation?

A Yes. The other agents were conducting surveillance.

Q How were they doing that, by car, on foot, et cetera?

MR. MAHONEY: Again, this is objected to, and definitely, it is prejudicial to the defendant Croom, because his name hasn't been mentioned.

THE COURT: I don't know that it is prejudicial to the defendant Croom, but the other agents, I assume, are available to testify, and I think that this witness should tell us what he did, where he did it, and who was present when he did it, and what took place within his observations. And I have given a limiting instruction as to Mr. Croom that the jury must keep separate the activities which took place



in the presence of Mr. Croom and those which did not.

Q Mr. Marable, did there come a time, sir, that you and the informant left the office?

A Yes.

Q Will you describe for the jury what happened after that, as best you can recall?

A Approximately 2:45 p.m., I drove Marvin Wilson, the informant, to 203 Oakmont, Apartment 16. Harold Hanesworth was not at home. Marvin Wilson and I then left and went to the Midway Bar and Grill, which is on Bailey Avenue in the City of Buffalo. At the time Mr. Wilson placed another phone call --

MR. RENDA: Objection, unless the call was placed in his presence.

THE COURT: He may say that he placed a phone call. He can't tell who he called or what happened.

Did you see Wilson place the phone call?

A Yes, sir.

THE COURT: All right, I will let that much stand.

Q And what else happened about that time, sir?

A At that time Investigator Herritage walked into the bar and went to the men's room. I walked into the men's room

and informed Investigator Herritage --

MR. MAHONEY: Just a moment. I object,  
Your Honor.

THE COURT: It is sustained.

MR. MAHONEY: Thank you, Your Honor.

THE COURT: I will let the part of  
the answer stand where he says that he walked  
into the men's room, but what he said to Mr.  
Herritage would be hearsay, and I would not  
take it.

Q Did you have a conversation with Mr. Herritage?

THE COURT: "Yes" or "no"?

A Yes.

Q After that, if you know, what did you do and what did  
Mr. Herritage do?

A Mr. Herritage left the bar, and I walked back into the  
barroom area, and the defendant -- correction -- Mr.  
Wilson, the informant, placed another phone call. As a  
result of the phone call to --

MR. MAHONEY: That is objected to.

MR. RENDA: Objection, Your Honor.

THE COURT: I will strike out "as a  
result of the phone call." However, he may  
testify that Mr. Wilson placed a third call.

Q After Mr. Wilson placed a call, sir, what did you do, if



anything?

A I drove Mr. Wilson to Clark's Club Venus. It is a bar which is on East Ferry Street in the City of Buffalo.

Q Mr. Marable, can you give the jury approximately how much time had elapsed when you first went to Mr. Hanesworth's until you arrived at Clark's Club Venus, approximately?

THE COURT: Why don't you tell us what time you got to Clark's Club Venus?

A It was approximately four p.m.

Q Would you tell us, sir, what you did when you got to Clark's Club Venus?

A Mr. Wilson and I entered the bar, and Mr. Wilson had a conversation with Reggie Sanders, who was in the bar.

Q Did you see Mr. Hanesworth in the tavern, sir?

A No, I did not.

Q Did you make any efforts at that time to locate Mr. Hanesworth?

A Yes.

Q Would you tell us, or tell the jury, what you did next, sir?

A I drove Mr. Wilson back to 203 Oakmont, and we knocked on the door, and a black woman answered the door, and we went into the house. Mr. Wilson and I went into the house. At that time I saw Mr. Hanesworth standing in

the kitchen, and Mr. Hanesworth said that he would be ready.

MR. MAHONEY: Just a moment. I object to this, Your Honor.

THE COURT: I will instruct the jury at this time that there is no showing that Mr. Croom was in the house of Mr. Hanesworth and that this conversation between this witness and Mr. Hanesworth may be considered by you only in determining the case of Mr. Hanesworth. It is not binding on Mr. Croom in any way, and nothing that was said there has anything to do with Mr. Croom.

Q Mr. Marable, before you discussed what you and Mr. Hanesworth talked about, I wonder if you can tell us, sir, if you see Mr. Hanesworth in the courtroom today.

A Yes, I do.

Q Would you point him out for us, please?

A Yes. He is wearing the blue suit, the second seat in the back, on the left.

MR. WAGNER: Let the record reflect that Mr. Marable has identified the defendant in this case, Harold Hanesworth.

THE COURT: The record may so indicate.

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Q Mr. Marable, I would like you, sir, to pick up your discussion and tell the jury what happened at Mr. Hanesworth's residence on May 13th?

A After we walked into the house, Mr. Wilson and I, Mr. Hanesworth was standing in the kitchen. Mr. Hanesworth said that he was waiting for a phone call, and he would be ready in a few minutes. About five minutes later, Mr. Hanesworth said, "Let's go."

And he said, "You follow me."

Mr. Hanesworth and Mr. Wilson got into a brown Buick, and I got into my car, and I followed Mr. Hanesworth to 332 Leroy Street.

THE COURT: Did the phone ring between the time he had the conversation and the time he got in the car? "Yes" or "no"?

A No.

Q That was 332 Leroy Street?

A Yes.

Q About how long did it take you to get to Leroy Street, sir?

A Approximately five minutes.

Q Would you tell us, sir, what happened, what you observed and what you saw happening when you got to the area of 332 Leroy Street?

A Mr. Hanesworth pulled the car he was driving into the

adjacent driveway, and I pulled in my car in front of 332 Leroy. Mr. Hanesworth and Mr. Wilson got out of the car, and a black man was standing in front of the house and later identified as Simon Croom.

Q Did you see the black man yourself, sir?

A Yes.

Q Do you see that same black man, or that same man, in the courtroom today?

A Yes, I do.

Q Would you point him out for us, please?

A Yes. He is sitting in the first chair on the right, wearing a black and white suit with a white shirt.

MR. WAGNER: Let the record reflect that Mr. Marable has identified the defendant, Simon Croom, in this case.

THE COURT: The record may so indicate.

Q Mr. Marable, I would like you to pick up and continue describing for the jury what happened in the vicinity of 332 Leroy Street?

A Mr. Hanesworth and Mr. Croom walked over to the side, and they engaged in a conversation.

Q You did not hear what they said, sir?

A No, I did not.

Q Where was Mr. Wilson at this time?

A Mr. Wilson was standing next to me.



Q Continue, please.

A Mr. Hanesworth and Mr. Croom talked for about three minutes. And then Mr. Hanesworth said, "Let's go."

And we all got into the car that I was driving. Mr. Hanesworth was in the front seat. Mr. Croom and Mr. Wilson were in the back seat. And I said, "Where to?"

Mr. Hanesworth replied, "To Clark's Club Venus."

I drove to Clark's, and I parked on a side street, Schuele Street.

Q Do you know how to spell that?

A S-c-h-u-e-l-e.

Q Continue, please.

A At that time, after we arrived, the four of us got out of the car -- Mr. Wilson, myself and Mr. Hanesworth and Mr. Croom. When we were outside the car, Mr. Hanesworth said, "Give me the money."

MR. MAHONEY: Your Honor, that, again, is objected to.

THE COURT: Where was Mr. Croom at the time Mr. Hanesworth said this?

A He was standing outside the car.

THE COURT: What was the distance between him and Mr. Hanesworth when he said this?

A Approximately four feet.

MR. MAHONEY: Exception, Your Honor.

THE COURT: Yes, you may have an exception.

Q Continue, sir.

A Mr. Hanesworth and I got back into the car, and I counted out the three hundred and fifty dollars and handed it to Mr. Hanesworth.

Q Was that your money, sir?

A No. It was official advance funds from the Drug Enforcement Office.

Q Did you have any further conversations with Mr. Hanesworth while you were back in the automobile, if you can recall?

A No.

Q Then what did you do, sir?

A Mr. Hanesworth and I then got out of the car, and Mr. Hanesworth, myself, and Mr. Croom and Wilson walked into the Clark's Club Venus.

Q Mr. Marable, if you know, sir, when you and Mr. Hanesworth were in the car, where were Mr. Wilson and Mr. Croom?

A They were standing outside the car.

Q About how far from the car would they have been, sir?

A They were right next to the car. They were about two feet.

Q Will you continue, sir, and tell us what happened after that?



A After we entered the bar, Mr. Croom and Mr. Hanesworth walked into a room which was in the back. It was a pool room area, and they engaged in a conversation.

Q Could you hear what they said?

A No, I could not.

Q About how far were you from the two gentlemen at that time, sir?

A Approximately fifteen to twenty feet.

Q Would you tell us what you observed at that time, sir, if anything?

A I observed Mr. Hanesworth hand Mr. Croom some folded money.

THE COURT: You observed what?

A Mr. Hanesworth handed Mr. Croom some folded money, bills.

Q Do you know where Mr. Hanesworth got the money, sir; that is, was it in his hands, in his pocket?

MR. RENDA: I object to the leading nature of that question.

THE COURT: It is leading, but he may be asked if he saw where the money came from.

A From his pants pocket, front pants pocket.

Q What did you do next, Mr. Marable?

A I then walked over to Mr. Hanesworth and Mr. Croom and asked Mr. Hanesworth what was happening with the money. Mr. Hanesworth replied that he was putting more money in with my money.

MR. MAHONEY: Again, this is an objection, Your Honor.

THE COURT: Yes, I will sustain the objection because there has been no showing that Mr. Croom was a party to this conversation.

Mr. Wagner, I think you are required when you elicit any conversations to make it clear, first, before you bring the conversation out whether or not it is offered solely against Mr. Hanesworth or not. In other words, I want to know where Mr. Croom was when this conversation took place, so Mr. Mahoney will know whether he should object or not.

MR. WAGNER: Absolutely.

DIRECT EXAMINATION CONTINUED

BY MR. WAGNER:

Q When you went over to Mr. Hanesworth, where was Mr. Croom standing, if you know?

A He was standing next to Mr. Croom.

MR. MAHONEY: Objection, Your Honor.

THE COURT: How close?

A A foot.

THE COURT: The objection is overruled.

Q Would you tell us, sir, and pick up again and tell us



what conversation you had with Mr. Hanesworth at that time?

A I asked Mr. Hanesworth what was happening with the money. He then replied that he was putting more money with the money that I had in order to purchase, to buy a larger quantity of dope. Mr. Hanesworth said that I would get almost three bundles instead of two bundles.

MR. MAHONEY: If Your Honor please, I have to object to this because this is a conversation between this gentleman and Hanesworth, with my man being present, and he is under no duty whatsoever to respond to the conversation taking place between this man and --

THE COURT: I will take that matter up later in my general instructions to the jury, and I will note your objection in this regard. And I have to say again, Mr. Wagner, it wasn't clear to me whether Mr. Croom was present at the time this conversation took place or not. So it must be brought out clearly so the attorney for Mr. Croom knows whether he has to make an objection to protect his client's rights.

Q Mr. Marable, during this conversation with Mr. Hanesworth, was Mr. Croom present, sir?

A Yes.

Q About how far was he from you and Mr. Hanesworth?

A We were all standing together, about one foot apart from each other.

Q Did you have any other conversation with Mr. Hanesworth at that time, and also was Mr. Croom still present during those conversations?

A At that time I had no further conversation with Mr. Hanesworth.

Q Did you have any conversations with Mr. Croom at that time, sir?

A Yes.

Q About how far were you gentlemen from each other at that time?

A The same distance.

Q What conversation, sir, did you have with Mr. Croom at that time, as best you can recall?

A I asked who had the money, and Mr. Croom replied, "I do."

THE COURT: Was Mr. Hanesworth  
present at this time?

A Yes, he was, yes.

Q What else did you have to say to Mr. Croom and what else did he say to you at that time, sir?

A That was the end of the conversation right then.

Q I would like you to describe what else happened at Clark's Club Venus that day, sir?



A After I had questioned Mr. Croom, I walked back over to where Mr. Wilson was standing, the front part of the bar, and a short time later, Mr. Hanesworth left the bar and Mr. Croom walked over to the bar stool and sat down and engaged in conversation with Mr. Sanders.

MR. MAHONEY: With who?

A Mr. Sanders. After a short conversation with Mr. Sanders, Mr. Croom left the bar. At that time I asked Mr. Wilson to go out and --

MR. MAHONEY: That is objected to, any conversation between he and Wilson.

THE COURT: Yes, I will sustain the objection.

MR. MAHONEY: I ask that the jury be instructed to disregard that.

THE COURT: Yes. It will be stricken out, any conversation with Mr. Wilson, and the jury is instructed to disregard it.

Q Did you have a conversation with Mr. Wilson, sir?

A Yes.

Q Did Mr. Wilson stay there, or did he leave?

A He left.

Q Did you see Mr. Croom, Mr. Hanesworth or Mr. Wilson again, sir, after that?

A Yes, before Wilson returned.

Q About how long?

A Approximately one minute later. Mr. Croom then re-entered the bar three minutes after that, and he said, "Let's go."

Q Did you have any conversations with Mr. Croom when he came back in the bar, sir?

A No, not in the bar.

Q After he said, "Let's go," what did you do?

MR. RENDA: Your Honor, I object unless this conversation, so far as Hanesworth is concerned, was a conversation within the proximity of the defendant Hanesworth.

THE COURT: Yes, the same ruling that I made with respect to the objection on behalf of Mr. Croom applies equally to Mr. Hanesworth. Now please bring out, before you bring in any conversations, who was present. Was Hanesworth present?

MR. WAGNER: I believe he testified that Hanesworth left the bar and did not come back.

THE COURT: I will sustain the objection, and I point out to the jury that as to this testimony, it is not binding upon Mr. Hanesworth.

Q Mr. Marable, when you walked out of the Clark's Club Venus



with Mr. Croom, who was with you, sir?

A Mr. Croom and Mr. Wilson.

Q And yourself?

A Yes.

Q Did you have any further conversations with Mr. Croom at that time?

A Yes, I did.

Q Could you tell the jury what that was, please?

A I asked Mr. Croom who had the dope, and Mr. Croom replied, "I do," and that everything was "cool."

THE COURT: Everything was what?

A "Cool."

THE COURT: "Cool"?

A Yes.

Q What did you do after that, sir?

A We walked back to the car, and Mr. Hanesworth was sitting on a stool, which was opposite the car.

Q He was outside?

A Yes. When we reached the car, Mr. Croom handed Mr. Hanesworth a tinfoil packet.

Q How far were you from Mr. Croom and Mr. Hanesworth when you saw this?

A About three feet.

Q Did you hear them say anything at that time?

A No.

Q Where was Mr. Wilson at that time?

A Mr. Wilson was standing next to me.

Q And describe what else you saw and what else happened at that time?

A At that time Mr. Hanesworth, Mr. Croom, Mr. Wilson and myself entered the car I was driving, and Mr. Hanesworth again sat in front, and Mr. Croom sat in back with Mr. Wilson. I then asked Mr. Croom what was his name, and he replied his name was "Sy," and I told him my name was "Ron."

Q By the way, that is not your name, is that correct?

A That's correct.

Q Why did you tell him that?

A That was an undercover name that I was using.

Q After the four of you got back in your car, sir, I would like you to pick up and tell the jury what happened after that?

A I then said, "Where to?"

And Mr. Hanesworth said, "Back to Leroy."

I drove back to Leroy Street where Mr. Hanesworth, Mr. Croom and Mr. Wilson got out of the car. Mr. Hanesworth, Mr. Wilson got into a brown Buick that Mr. Hanesworth was driving. Mr. Croom and a black woman got into another brown Buick, which was an Electra that Mr. Croom was driving, and Mr. Hanesworth said, "Follow me."



Q Did you do that, sir?

A Yes. He told me he was going back to Oakmont Street.

Q Would you tell the jury, sir, what you did then?

MR. MAHONEY: I would like to have that prior statement stricken out. That is not binding on Croom whatsoever.

THE COURT: It is not binding on Mr. Croom.

MR. MAHONEY: Thank you, Your Honor.

Q Would you continue, sir, and tell us what you did then?

A When I arrived at 203 Oakmont, the car that Mr. Croom was driving was parked in the parking lot, and the vehicle that Mr. Hanesworth was driving was also parked in the lot.

THE COURT: Did you have the dope at this time?

A No, sir. At that time I knocked on the door, and a black woman let me into the house, and Mr. Hanesworth walked into the kitchen and said, "Follow me upstairs."

MR. MAHONEY: This, again, is objected to, Your Honor.

THE COURT: Yes. It is not binding on Mr. Croom.

Q Mr. Marable, when you went into the house, who was it that let you in, if you know, sir?

A No, I do not know.

Q Was it a man or a woman, sir?

A It was a woman, a black woman.

Q When you got in the house, other than the black woman, who else did you see, sir, at that time?

A No one.

Q Then there came a time that you saw Mr. Hanesworth?

A Yes.

Q What happened to the black woman, if you know, sir?

A No, I do not know.

Q She was not present with you?

A Soon after I walked into the house, Mr. Hanesworth and I walked upstairs.

Q And the two of you walked upstairs alone?

A Yes.

Q Would you tell us what you saw when you got upstairs?

A I followed Mr. Hanesworth into a bedroom, which was off to the right upstairs.

MR. MAHONEY: I don't wish to be overly technical, but, again, I don't think that Mr. Wagner is following what you indicated.

THE COURT: As I understand it, Mr. Croom is not here at this time, according to this witness, is that right?

MR. WAGNER: Your Honor, he testified that he was just with Mr. Hanesworth, so I guess



the inference was Mr. Croom was not there.

THE COURT: It is not overly technical. It is important that the jury keeps separate in their minds whenever anything is being testified to who was present and who was not present among the two defendants. All right.

MR. MAHONEY: And I understand from your statement that Mr. Croom was not there at that time?

THE COURT: That is what I understand. Is that right?

THE WITNESS: Yes.

THE COURT: All right.

Q Did you see Mr. Croom present in the house at any time, sir?

A No.

Q Did you see his car present at any time, sir?

A Yes.

Q Where was his car?

A Parked in the lot, in the front.

Q But you didn't actually see him in the house?

A No, I did not.

Q So the record is clear, you didn't see Mr. Croom at all the rest of that day, is that right, sir?

A That's correct.

Q When you went upstairs with Mr. Hanesworth, sir, where did you go and who was present, and what did you do?

A When I walked into the bedroom, which was when Mr. Wilson was present, on the bed I saw two pieces of tinfoil laying on the bed. They were empty.

MR. MAHONEY: Your Honor, to save some time in repeating objections, whatever occurred in the bedroom I'm objecting to. Croom was not there, and is not binding on him, Your Honor.

THE COURT: That's right.

Q Mr. Marable, Mr. Hanesworth was with you, I take it?

A Yes.

Q And Mr. Wilson?

A Yes.

Q I would like you to tell the jury what you saw, what happened and what, if anything, Mr. Hanesworth told you at that time, sir?

THE COURT: This is received only as to Mr. Hanesworth. Go ahead.

A There were two pieces of tinfoil laying on the bed that were empty. Mr. Hanesworth then took an album cover.

Q What do you mean by that, sir?

A It was a jacket that holds an album.

Q A record album?

A A record album. It was a black and silver Bobby Womack



album. He placed it on the bed. Then Mr. Hanesworth reached into his pants pocket and pulled out a tinfoil packet.

Q Can you describe, sir, what the tinfoil packet looked like that he pulled out of his pocket?

A Yes. It appeared to be the type of tinfoil that you used in the house, in the household, for household purposes.

Q Can you give us an idea of its approximate size?

A The packet was approximately a three and a half to four inches long, a half inch wide and a half inch thick.

Q Would you tell us, sir, what happened after that, what you observed?

A After Mr. Hanesworth pulled the packet out, he said, "I'm going to do it up in quarters." Then Mr. Hanesworth reached into his pants pocket and pulled out a set of measuring spoons.

Q Can you describe what these measuring spoons looked like?

A They are the common household measuring spoons that he used to measure flour and sugar.

Q What did Mr. Hanesworth do at that time, sir, if you know?

A He then took one of the smaller spoons. There were about six spoons, and he took one of the smaller spoons, and he emptied the contents of the tinfoil packet on the album cover.

Q Can you describe, sir, what the contents looked like?

A It was a brownish-white tissue powdered substance.

Q What did he do then, sir?

A He then took one of the smaller spoons and began to divide the substance of the album cover into the two packets, into the two pieces of tinfoil.

Q Did he do that, sir?

A Yes, he did.

Q Approximately, in what proportion did he divide these two parcels of substance?

A At the beginning it was one for one, one spoon for each packet, and at the end there was a small amount left, which he put into one of the packets.

Q What did he do after he spooned these packets, or spooned the substance out of these packets?

A He then wrapped the two pieces of tinfoil up and held them in his hand. We then walked downstairs, myself, Mr. Hanesworth and Mr. Wilson walked downstairs, and when we reached the bottom of the step, Mr. Hanesworth handed me one of the tinfoil packets, and he said that I had a good deal. And I asked him, "Did I get the fattest package?" And he replied, "Yes."

I then told Mr. Hanesworth the next time that I came to do business with him, I wanted everything to be set.

MR. MAHONEY: This is objected to,

Your Honor.



A Yes.

Q Who was that, and approximately what time?

A It was just around the afternoon, three, four o'clock in the afternoon. I got back home, and Vanessa came and she told me that Marvin was at the door with some other guy and wanted to see me.

Q Who is Marvin?

A Marvin Wilson, and I knew him from a previous conviction from being up in Macedon Park Rehabilitation Center, and through that I knew him from the street, you know.

Q Did you know the other man?

A No, I didn't.

Q I'm talking about the 13th?

A Right.

Q This other man, did he give you a name?

A Marvin introduced him as "Ron."

Q With reference to the date in question, the date of this Indictment, approximately what time did this man come to your door?

A It was in the afternoon between three and four. Exactly what time I don't remember.

Q Have you seen that other man since?

A Which one? Marvin or --

Q Let's talk about the man you didn't know.

A I have never seen him up until today again.

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THE COURT: Members of the jury,  
will you step outside for a brief recess?  
And don't discuss the case, please.

(Recess.)

(Jury not present.)

MR. RENDA: Your Honor, I am wondering if the Court would permit me at this time to ask Mr. Hanesworth concerning the transaction of the prior day as proof again of his plan, his scheme, his design, to commit this crime. Obviously, I didn't want to ask him that without getting a prior ruling from the Court.

I also would take notice that Mr. Renda merely asked Mr. Hanesworth if he had any criminal convictions and got a "yes" answer, but he did not ask him concerning the nature of those crimes.

THE COURT: I limit you on cross-examination to a crime which is within the definition of Rule 609(a) of the Federal Rules, that is to say, punishable by a sentence of more than one year and within ten years last past.

You have a copy of his rap sheet, I

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assume?

MR. WAGNER: I have a copy of his rap sheet, and my understanding is that on May 15, 1970, he was arrested and subsequently convicted of possession and sale of dangerous drugs, and the term he received was 15 to 30 days.

THE COURT: What year was that?

MR. WAGNER: That was 1970. And he further had a conviction in 1972 following an arrest on July 23, '72, for a violation of the Illegal Gun Act and criminal possession of a hypodermic instrument. He received one year and three months for that, which would seem to imply that it was a punishment which could exceed one year.

THE COURT: You don't know from your sheet whether that is two separate sentences?

MR. WAGNER: I just got a note that I would receive certified copies of these convictions in about ten minutes, Your Honor.

THE COURT: All right.

MR. WAGNER: I would know at that time.

THE COURT: Is this necessary?

MR. WAGNER: I am not sure, Your Honor.

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THE COURT: Go ahead, Mr. Renda.

MR. RENDA: Your Honor, as I was approaching the bench, I think I heard Mr. Wagner say he wanted to get in the incident of the 12th of May. He strongly oppose that. I

THE COURT: Did I understand correctly that he testified he never met Marable until the 13th?

MR. RENDA: No. He corrected himself on that, Your Honor. gain q  
the date, and then he said, "I met him the day before." He did correct himself on that.

THE COURT: What is the Government's contention? When did he first meet Marable?

MR. WAGNER: He first met Mr. Marable on the 12th, the day before.

THE COURT: And he dealt with him the first day he met him?

MR. WAGNER: Mr. Marable would testify, and we would offer proof that he sold Mr. Marable heroin that day.

MR. RENDA: But he did so testify he met him the day before, so I don't see any

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reason that the 12th has to be explored in any great detail.

With reference to the second half of the request, I am cognizant of the new Federal rule, but I would ask the Court in considering the former "Luck doctrine," U. S. v. Luck and other case law relating thereto, and presently that would inure to this particular defendant. And use of these prior convictions would outweigh any probative value they may have. One conviction was in 1970, which is more than five years ago, in any event. The other one is '72, and the rap sheet indicates an illegal gun conviction, and this would weigh, I think, against the defendant.

THE COURT: Are we talking about a machine gun, or something like that, or a just an ordinary handgun?

MR. WAGNER: I don't know the specifics.

THE COURT: The man has admitted that he has a record. Is it really necessary? If I were forced to choose, I would probably say that a great many of your jurors have guns, handguns, too.

What do you say, Mr. Mahoney?



thousand dollars in cash. Can I make that motion?

THE COURT: Cash or surety?

MR. WAGNER: Cash or surety. I make that motion on the basis of the fact Mr. Hanesworth has been convicted of a very serious crime. There have been some problems, at least some related problems, concerning where Mr. Hanesworth was located and some concern by the Court that he perhaps would not even show up for the first day of trial. I don't believe he has any gainful employment. His family situation, as I understand it, is not the most stable, and based on all those factors, we ask that the bail be increased.

THE COURT: I will hear you on that subject, Mr. Renda.

MR. RENDA: Yes, if I may have thirty seconds with my client.

THE COURT: As I understand, he is in a methadone maintenance program, and he is taking medication at this very time?

MR. RENDA: Yes, Your Honor. That is true. There is one piece of fact information that I want to ask him before I speak on the record.

(Pause in the proceedings.)

MR. RENDA: Your Honor, at this time I would like to speak on behalf of Mr. Hanesworth in opposition



CHARGE OF THE COURT

THE COURT: Members of the jury, we are now at the final stage in the trial where you are about to begin your final function as jurors. Here you are to discharge your final duty in an attitude of complete impartiality, and as I emphasized when you were first selected, you are to act without bias or prejudice, for or against the Government or any defendant as parties to these controversies.

Let me state that the fact that the Government is a party here entitles it to no greater consideration than that accorded to any other party in court.

By the same token, it is entitled to no less consideration. All parties, individuals and Government alike, are equals in this courthouse before the bar of justice.

Your final role here, your job is to decide and pass upon the fact issues in this case. You are the sole and exclusive judges of the fact. You determine the weight of the evidence. You will appraise and decide the credibility or truthfulness of the witnesses. You draw the reasonable inferences from the evidence, and you resolve such conflicts as there may be in the evidence.

And my function here is to instruct you as to



the law, and it is your duty to accept these instructions as to the law and to apply them to the facts as you may find them to be.

Now you are not to consider any single instruction which I give you alone as stating the law, but you must consider all of my instructions, taken together as a whole.

With respect to any fact matter, or any evidence matter, it is your recollection and yours alone that governs. And anything that the lawyers, either for the Government or the defendants, may have said with respect to matters in evidence or during the trial or in a question, or in argument or in summations, is not to be substituted for your own recollection of the evidence.

And anything I might say during the trial, or anything I might refer to during my instructions as to fact matter or any matter in evidence, is not to be taken in place of your own recollection.

Now, the attorneys not only have their right, but it is their duty to make objections and to make arguments and press whatever legal theories they may have. They are simply performing their duty. A trial is not a contest between lawyers. Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken out by the Court must be



disregarded in its entirety.

An any instructions as to evidence which I gave you during the trial, limiting instructions as to what purpose it can be used for, and any evidence that I limited in our present discussions with you, must be treated accordingly and in compliance with my instructions.

Now it is not my function to favor one side or the other, or to indicate to you, the jury, in any way that I have any opinion as to the truthfulness of any witness or as to the guilt or innocence of either defendant. That is your function to decide. It is yours alone, and I leave it entirely with you. So please don't assume that I hold any opinion in any matters concerning this case. And please don't reach any conclusion that I may have some attitude or that I may tend to favor one or the other in the case. I do not.

As I told you earlier, the Indictment here itself is no evidence of the crimes charged. Instead, an Indictment is the procedure or method under the law whereby persons accused of crimes by a Grand Jury are brought into court to have their case decided by a trial jury such as yourselves. Therefore, the Indictment must be given no evidentiary value, but shall be



treated by you only as an accusation. It is not evidence or proof of the guilt of either defendant, and no weight or significance whatsoever is to be given to the fact that an Indictment has been returned against the defendants. They have each pleaded not guilty, and thus, the Government has the burden of proving the charges beyond a reasonable doubt. The defendant does not have to prove his innocence.

The law presumes a defendant to be innocent of crime. Thus, a defendant, although accused, begins the trial with a clean slate, with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against an accused person. So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of that defendant's guilt after careful and impartial consideration of all the evidence in the case pertaining to him.

It is not required that the Government prove guilt beyond all possible doubt. The test is one of reasonable doubt. A "reasonable doubt" is a doubt based upon reason and common sense -- the kind of doubt that would make a reasonable person hesitate to act in matters of importance to himself. Proof



beyond a reasonable doubt must, therefore, be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the important matters of your own life.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. . This burden never shifts to a defendant; and the law never imposes upon a defendant in a criminal case the burden or the duty of calling any witnesses or producing any evidence.

If after a fair and impartial consideration of all the evidence, you can candidly and honestly say you are not satisfied of the guilt of the particular defendant whose case you are then considering, that you do not have an abiding conviction of that defendant's guilt of the charge, in sum, if you have such a doubt, as I said before, as would cause you as prudent persons to hesitate before acting in matters of importance to yourselves, then you have a reasonable doubt, and in that circumstance, it is your duty to acquit that defendant in this case as to which Count you are then considering.

On the other hand, if after such an impartial and fair consideration of all the evidence, you can candidly and honestly say you do have an abiding conviction of a defendant's guilt, such a conviction as you



would be willing to act upon in important and weighty matters of the personal affairs of your own life, then you have no reasonable doubt, and under those circumstances, it is your duty to convict.

"Reasonable doubt" does not mean a positive certainty or beyond all possible doubt. If that were the rule, few men, however guilty they might be, would ever be convicted, because it is practically impossible for a person to be absolutely and completely convinced of any disputed fact which by its nature is not susceptible to mathematical proof. For that reason, the law in a criminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt, not beyond all possible doubts.

As I told you earlier, each defendant is entitled to a separate verdict as to himself based on the evidence concerning his own actions and words.

C2      An admission or incriminatory statement made or act done by one defendant outside of court may not be considered as evidence against the other defendant who was not present and did not see the act done or hear the statement made, or participate in the incident in which the other defendant may have been participating. However, the sworn testimony in court of a defendant is not hearsay, and because that defendant is present in



court for cross-examination, his testimony can be considered by you in the case of the other defendant, as well as in connection with his own case. But as far as out-of-court statements and declarations, they are limited and they are not applicable to a defendant who is not present and did not participate.

Now for your guidance in considering the evidence you have heard in the past few days, I must tell you that there are two classes of evidence recognized and admitted in courts of justice upon either of which the jurors may find an accused person guilty of a crime. One is called direct evidence, and the other is called circumstantial evidence.

Direct evidence tends to show the fact in issue without any need for any other amplification, although, of course, there is also the question whether it is to be believed.

Circumstantial evidence tends to show facts from which the fact in issue may reasonably be inferred. It's evidence that tends to prove the fact in issue by proof of other facts which have a legitimate tendency to lead the mind to infer or conclude that the facts sought to be established must be true.

There is a traditional example, and probably a number of examples could be given of the use of circum-



stantial evidence. Let's assume for a moment that you were in an office in one of the higher buildings down the street here that have windows that look down on the street below, and sometimes it's difficult merely by looking out of a window on a cloudy day in a tall building to determine whether it's actually raining or not. But if you look out of the window and you look down on the street and you see people walking by in the street with their umbrellas up, you will usually come to the conclusion it must be raining. You have direct evidence, the evidence of your own senses, that tells you the umbrellas are up. You can see them, and that evidence constitutes circumstantial evidence from which you are entitled to draw the inference or reach the conclusion that it must be raining. In other words, circumstantial evidence consists of facts proved from which the jury may infer by a process of reasoning other facts which may be in dispute, and circumstantial evidence, if believed, is of no less value than direct evidence, for in either case you must be convinced beyond a reasonable doubt of the guilt of the defendant before he may be convicted of any crime.

Now in determining what evidence you will accept, you must make your own evaluation of the testimony given by each of the witnesses and determine what



you believe to be the truth and the degree of weight to which you choose to give that testimony. The testimony of a witness may fail to conform to the facts as they occurred, because the witness didn't actually see or hear what he testified about, or she testified about, or because he or she is intentionally telling a falsehood or because his or her recollection of the events, or his or her memory is faulty, or because he or she hasn't expressed himself or herself clearly in giving testimony. There can be a number of reasons for differences or discrepancies of testimony. Simply because there is a discrepancy doesn't necessarily mean that one of the witnesses is intentionally lying, although that may be the case. That is a matter for you to determine. There is no magic formula by which you can evaluate testimony. You bring into the courtroom all your everyday experiences and backgrounds of your own lives. In your everyday affairs, you determine for yourselves the reliability of statements made to you by other people, and the same tests you use, the same common sense that you apply in your everyday dealings and in your everyday life are the tests that you will apply in your jury deliberations.

You may consider the interest or lack of interest of any witnesses in the outcome of this case. A



witness who is interested in the outcome of the case is not necessarily unworthy of belief, but the interest of a witness is a factor or a possible motive which you may consider in determining the weight and credibility to be attributed to that testimony, and in doing this, you may also consider if the testimony of the witness is corroborated or borne out by the testimony of others, or by documentary evidence or exhibits.

You may consider the bias or prejudice of a witness if there be any and the manner in which the witness gives his or her testimony on the stand, the appearance and conduct of the witness, his demeanor, the opportunity the witness had to observe the facts that he or she testified about and the probability or improbability of the testimony in the light of all of the other events in the trial.

You may consider whether a witness had a motive to lie. These are all items to be taken into your consideration in determining the truthfulness and weight, if any, that you will assign to that witness' testimony.

If those considerations make it seem there was a discrepancy in the evidence, then you should consider whether this can be reconciled by fitting the two witnesses' testimony together. If that is not possible, you should determine which of the two conflicting versions you will accept, if any.



Now, if any witness is shown to have knowingly testified falsely concerning any material matter in the trial, you have a right to distrust that witness' testimony in other things, and you may reject all of the testimony of that witness, or you may give it, or parts of it, such credence as you think it deserves.

Now the law permits a defendant, upon his request, to testify in his own behalf. The testimony of each defendant is before you. You must determine how far it is credible. The deep personal interest which every defendant has in the result of his case should be considered in determining the credibility of his testimony. You are instructed that interest may create a motive for false testimony. The greater the interest, the stronger the motive, and therefore, the interest of the defendants is a matter which may affect the weight which should be given to that testimony. However, that is a matter entirely for you to determine, using your own common sense and considering all the evidence in the case.

Furthermore, the testimony of a witness who is a State Trooper or an Agent of the Federal Drug Enforcement Administration is not, simply by the nature of his occupation or calling, entitled to any greater weight than that of any other witness in the case.



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The credibility and weight of testimony of such a witness is to be considered and decided by you in the same fashion as all other factual determinations, using your common sense and considering all that is before you in the trial record.

The rules of evidence ordinarily don't allow witnesses to testify as to their opinions or conclusions, and an exception to this rule exists for those who are called expert witnesses, witnesses who because of their education and experience have become experts in some art or skill or profession or calling, such as the chemist, Mr. Barbato, who testified before you. An expert witness is no different from any other witness, in that you are at liberty to accept or reject all or part of his testimony.

Now I'm going to read to you the Indictment. It is a single-Count Indictment, and it reads as follows:

"The Grand Jury charges: On or about the 13th day of May, 1975, in the Western District of New York, the defendants, Harold Hanesworth and Simon Croom, did knowingly, intentionally and unlawfully distribute approximately 4.71 grams gross weight of a substance containing heroin, a Schedule I controlled substance as set forth in Title 21, United States Code, Section 812; all in violation of Title 21, United States Code,



Section 841(a)(1)."

Now you are not required to remember the Section numbers of the laws which I will be reading to you, but it is essential that you remember what conduct the law forbids.

Section 841(a)(1) of Title 21 of the United States Code provides in pertinent part that: It shall be unlawful for any person knowingly or intentionally to distribute a controlled substance as listed on certain numbered Schedules which are part of the statute.

As set forth in Schedule I of Section 812 of Title 21, United States Code, heroin is one of the drugs listed as a controlled substance along with other drugs.

Now in order to convict a defendant of violating these statutes, the following three essential elements must each be proved to your satisfaction beyond a reasonable doubt. Please listen to the elements because they are important.

First: That the defendant whose case you are considering distributed or sold a substance, or aided and abetted another to do so, in the Western District of New York, and you all know that the City of Buffalo is in that District.

Second: That the substance so distributed or sold contained a measureable amount of heroin.



Third: That the defendant whose case you are considering, in doing so acted knowingly and willfully.

Those are the three elements of the crime charged here. Unless each element is proved beyond a reasonable doubt as to the defendant whose case you are then considering -- of course, you are going to consider each of these men separately -- but unless each element is proved as to the man's case you are then considering, you must find him not guilty. If all three elements are proved beyond a reasonable doubt, then it is your duty to find him guilty as charged.

The term "distribute" means to deliver heroin to the possession of another person. This means the actual or constructive transfer of the heroin to Mr. Marable acting in an undercover capacity as a pretended purchaser. There is no need to show sale for profit in order to find that heroin was distributed, but a sale for money followed by delivery would constitute distribution.

As I mentioned to you a moment ago, a distribution can be actual or constructive. A person who knowingly makes an actual, direct transfer of heroin to another would make an actual distribution.

A person who, although not actually distributing the substance himself, knowingly has both the power and



intention at a given time to exercise control over the substance and causes indirectly, through another person or persons, its distribution, would then have made a constructive distribution.

The law also recognizes that the act of "distribution" may be sole or joint. If two or more persons share in the distribution of a substance and act together, this would be a joint distribution. If only one person alone distributes a substance, this would be sole distribution.

If you find beyond a reasonable doubt from the evidence in the case that at the time and place of the alleged offense the defendants, Harold Hanesworth and Simon Croom, either alone or jointly with another, performed an actual or constructive distribution of heroin, then you may find that there was a "distribution" within the meaning of this Indictment.

Now as to the second element, I told you earlier heroin is a controlled substance within the reach of the statute. It is listed in a schedule which is numbered Schedule I. However, the Government must prove beyond a reasonable doubt that the substance in question, in fact, contained a measureable amount of heroin. It need not prove the exact quantity set forth in the Indictment. In deciding whether it was heroin,



you may consider, in addition to the testimony of the chemist, Mr. Barbato, also whether the person whose case you are then considering dealt with the substance as heroin, or described it as heroin in conversations with the undercover purchaser, and you may resolve this issue like all fact question in the case, upon all the credible evidence before you.

As to the third element, an act is done knowingly if it is done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Specific criminal intent must be proved beyond a reasonable doubt as to a defendant before he can be convicted. This does not mean that the Government must show that a particular defendant knew he was breaking a particular law before he could be convicted of a crime; nor does it mean that the Government has to show that the defendant intended to profit at the expense of somebody else; nor does it have anything to do with the defendant's personal or private reasons for violating a statute. For if, after considering all the evidence in accordance with my instructions, you come to the conclusion that the defendant whose case you are then considering violated the statute, then in that event his personal or private reasons for violating the statute are of no consequence so far as his



guilt is concerned.

I instruct you that these words "knowingly and willfully" mean deliberately, intentionally. In other words, you must be satisfied beyond a reasonable doubt that the defendant whose case you are then considering, acted with knowledge, consciously and in the free exercise of his will. The words "knowingly and willfully" are opposed to the idea of an inadvertent or accidental occurrence.

An act is done knowingly if it is done voluntarily and purposely and not because of mistake, accident, negligence or some other innocent reason.

An act is done willfully if it is done knowingly and deliberately.

Now in this case, both of the defendants are charged in the Indictment with distributing heroin. The Government contends that Mr. Hanesworth made the actual distribution and that Mr. Croom aided and abetted Hanesworth, or acted jointly with Hanesworth. Each defendant disputes these contentions. These are <sup>fact</sup> matters and they are to be decided by the jury in accordance with my instructions now being given to you.

In a case where two or more persons are charged with a commission of a single crime, the guilt of either one may be established without proof that he



personally did every act constituting the offense charged.

Section 2 of Title 18 of the United States Code provides that: "Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal."

Furthermore, it also provides "whoever willfully causes an act to be done, which if directly performed by him or another, would be an offense against the United States, is punishable as a principal."

In other words, every person who willfully participates in the commission of a crime may be found to be guilty of an offense. Participation is willful if done voluntarily and intentionally, and with the specific intent to do something the law forbids, which I previously defined for you.

Before a person, in this case Mr. Croom, can be convicted of aiding and abetting another person, in this case Hanesworth, to commit a crime, it must appear to your satisfaction beyond a reasonable doubt that the person who it is claimed is being aided and abetted was, in fact, acting knowingly and willfully, with specific criminal intent, as I explained it to you, and that the person who it is claimed is doing the



aiding and abetting, is also acting knowingly and willfully, and with the specific criminal intent to aid and abet the commission of a crime.

I instruct you that mere presence at the scene of the crime charged, or mere knowledge that a crime was being committed by another on May 13, 1975, or both, presence and knowledge, would not be sufficient to make a person an aider and abettor. Rather, it must appear that the person claimed to be an aider and abettor, in this case Croom, knowingly and willfully associated himself in some way with the criminal venture, and intentionally made it something that he wished to succeed by his efforts or participation, or had a stake in its successful outcome, and that he knowingly and willfully and intentionally did something to forward the sale of the heroin to the undercover agent.

If you find beyond a reasonable doubt that he had possession of the heroin or the money or talked to the agent, as the agent testified that he did talk to him, then you may regard that conduct as being an intentional participation to make this alleged sale by Hanesworth succeed by his efforts or participation. However, this is a question of fact. It is a matter for the jury to decide on the entire evidence in the case. And by setting forth these contentions, I must



again inform you they are only contentions, and it is a matter for your sole decision as to what the facts show and whether the facts show guilt of anybody as a principal or an aider or abettor beyond a reasonable doubt.

Now a word about deliberating. In your deliberations, your first step will be to select and agree upon a person to act as a foreman or forelady of the jury. The opinion of your spokesman is, however, no more important or significant than that of any other juror.

Each juror is entitled to his or her own opinion. Each one should exchange views with the others. That is the purpose of jury deliberations, to discuss the evidence; to consider the facts; to listen to the arguments of fellow jurors and present your individual views, and to consult with one another politely and reasonably; and to reach a fair and just verdict based solely and wholly on the evidence, if you can do so without violence to your individual judgment.

But each one of you decides the case for himself or herself after deliberation with the other jurors. You shouldn't hesitate to change your opinion if you find your opinion is wrong after listening to the others. However, if after carefully weighing all the evidence and listening to the arguments of your fellow jurors,



any one of you entertains a conscientious view that differs from the others as to how this case should be decided, you are not to give up your judgment simply because you are outnumbered. Your final vote must reflect your individual conscientious judgment as to how the case should be decided.

You are being asked to give two separate verdicts, a verdict as to Mr. Hanesworth and a verdict as to Mr. Croom. Any verdict as to either of them must be unanimous. Each is entitled to a separate decision, as I said to you earlier.

Now under your oath as jurors, you can't allow any consideration of the possible sentence or punishment which may be inflicted upon a defendant if convicted, to influence your verdict in any way or in any sense enter into your deliberations.

The duty of imposing sentence rests exclusively with the Court. Your function is to weigh the evidence in the case and to determine whether or not the defendant whose case you are then considering was proved guilty beyond a reasonable doubt, and to do so solely upon the basis of the evidence and the law as I explained it to you.

You are not to decide the case upon any assumption or conjecture, and you mustn't be influenced by any



sympathy or any inference not warranted by the facts and not proven to your satisfaction.

If you jurors fail to find beyond a reasonable doubt that the law has been violated by any defendant, you should not hesitate for any reason to find a verdict that he is not guilty. But on the other hand, if you find that the law has been violated as charged, by a defendant, you should not hesitate because of sympathy or any other reason to render a verdict of guilty as a clear warning that a crime of this character may not be committed with impunity. The public is entitled to be assured of this.

Now if you want the Exhibits, send out a note asking for what you want. If you want a copy of the Indictment, you can send out a note for that. But I caution you again, an Indictment is not evidence. It is just an accusation.

If there is anything about my instructions that is not clear, of course, you may send out a note. If you really come to a point where you want to have any evidence read, any testimony read, we will do that also, but before you ask for any testimony to be read, please try to exhaust your total of all your memory by discussion first. But if you want it done, the Court will be entirely willing to do it.



Now at this time since we have been spared, and all of our jurors are here in good health and ready to work, I am going to excuse the two alternates at this time with the thanks of the Court. And I want to say two things to both of you. I appreciate your prompt attendance here. You are not to discuss the case with anyone or speak to any of the attorneys or parties or anybody else until after this jury has finished its deliberations. You are not to say a word about the case until after that. Furthermore, the Clerk of the Court would like you to return Tuesday morning, nine thirty, Part I. So you may now withdraw.

(Two alternate jurors excused.)

(Two marshal were duly sworn.)

THE COURT: Members of the jury, I am going to ask you to remain seated in the jury box in the custody of the marshal very briefly, while I confer in the next room to see if the attorneys have any additional requests for instructions that I might not have covered in my statement to you. And during this period I ask you not to discuss the case with each other, because there is a possibility I might give additional instructions.

Would the attorneys and the Court Reporter join me inside my chambers, please.

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(In the robing room.)

THE COURT: Does the Government have any additional requests or exceptions?

MR. WAGNER: We do not, Your Honor.

THE COURT: Mr. Renda?

MR. RENDA: No, Your Honor, no exceptions.

MR. MAHONEY: No exceptions, Your Honor.

THE COURT: Do I understand the Exhibits may be sent in if the Court gets a note from the jury, without the necessity of reconvening?

MR. MAHONEY: That is my understanding.

MR. RENDA: Yes, Your Honor.

MR. WAGNER: I consent to that.

THE COURT: Thank you.

(In open court.)

THE COURT: Members of the jury, you may now withdraw and commence your deliberations.

(At 3:30 p.m., the jury retired to deliberate upon a verdict.)



UNITED STATES OF AMERICA  
IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA )

- vs- )

HAROLD HANESWORTH, )

Defendant. )

CR: 75-186

Before:

Hon. Charles L. Brieant, Jr.,  
(Sitting by Designation)

Buffalo, New York, December 20, 1976.

For the Government: Edward J. Wagner, Esq.

For the Defendant: James P. Renda, Esq.

THE COURT: Mr. Renda, is there any reason why  
sentence should not be imposed at this time with respect to  
Mr. Hanesworth?

MR. RENDA: No, Your Honor. There is not. We do  
not make any motions.

THE COURT: Mr. Hanesworth, is there any reason  
why sentence should not be imposed in your case at this time?

DEFENDANT HANESWORTH: No.

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THE COURT: I can't hear you.

DEFENDANT HANESWORTH: No.

THE COURT: Mr. Renda, you may be heard in your client's behalf and may present any information in mitigation of sentence.

MR. RENDA: Thank you very much. Your Honor, at this time I would like to make a statement on behalf of defendant Harold Hanesworth. Mr. Hanesworth has faced the matter that is before the Court. He has been found guilty by a jury trial, and he asks that the Court take into consideration certain mitigating factors before imposing sentence. I wish to point out at the outset that our request here is that Mr. Hanesworth be sentenced under the alternative sentencing provisions under Title 18, specifically Chapter 314, which deals with narcotics addicts.

Before I make a statement relative to his particular eligibility under this particular provision of Title 18, I would like some references to some of the matters that are contained in the Probation Report. We do not take issue with the contents of the report, but a careful study by myself of the report reflects a thread that runs through this particular defendant's life, a thread of narcotics addiction.

I don't think there is any other way that the

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Probation Report can be read. His prior involvement with the law unquestionably is all related to the use of narcotic drugs. He is not a violent person. There is no history of violence in his background. There is only a history of criminal involvement, either directly related to narcotics or in crimes which would enable him to procure the necessary funds to procure narcotics.

This man, it appears, has an eleventh-grade education. He has family. He has children. Perhaps the only stable relationship in his entire life is the one that he is presently involved in. He has been with the woman that he calls his wife and all the explanation of the law to him at this point does not change it, because in his heart she is his wife. We are not talking about a passing relationship of a few months or a few weeks or even a year or two. We are talking about a relationship which appears to go back, if my memory serves me correctly, about eleven years. There are children of this marriage. I, for one, think that this man can be rehabilitated. He needs a proper focus, he needs direction, he needs education, he needs treatment. Incarceration in a penal institution will not serve, in my judgment, the objective of rehabilitation. To do that would just be another human given another number in another institution and shut away for a period of

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time only to return to the previous environment that he enjoyed before the incarceration.

This man needs help. He needs treatment. I need not remind the Court of the fact that Mr. Hanesworth, who is on methadone maintenance, reflected that by his demeanor during the course of this trial and by his need for the methadone in order to, in effect, get through the day.

Your Honor, under Chapter 314 of Title 18, in reading the definition of an addict, I cannot think of a more appropriate case than this. This man is an addict and is willing to admit the same in open court today. He is not excluded by any crimes of violence. He needs treatment. He needs the educational, social and psychological help that this particular section of the law can give him. He is not excluded by prior felonies. There is a technical problem but a technical problem that I feel can be overcome by some form of a conditional sentence here, and that technical problem is as follows: As I read the Section, subsection (f) under Section 4251, subparagraph 3, it appears to exclude an offender in which there is pending a prior charge of a felony which has not been finally determined. However, if that sentence is read in conjunction with subsection (e) of the same Section, the definition of



conviction means final judgment. We do not have a final judgment here in this case. We do have a pending companion case.

THE COURT: Well, a companion case is subject to being dismissed, but how about this conviction for the shotgun? You don't think that is a crime of violence, having a sawed-off shotgun?

MR. RENDA: It is my understanding it would be not -- it was a possessory crime, and I understand from my conversations with the U. S. Attorney's Office, with Mr. Wagner, and Mr. Wagner is prepared to make this statement today, that the pending companion case can be appropriately disposed of in order to permit the Court to avail this man of this particular Section of the law.

The narcotics substance in question here, given the view of the testimony, and I'm not quarreling with the testimony, but I think an analysis of that testimony indicates that Mr. Hanesworth's use of a drug in this particular case, his procurement of a drug in this particular case, was in order to procure a drug for his own personal use. The testimony of Agent Marable would reflect that particular situation, because there was, in effect, a splitting of the quantity of drug, according to Marable's testimony.

Your Honor, at worst, if this sentence is

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accepted, if this particular approach is accepted, at least the Court would have the benefit of an examination done pursuant to Section 4252 of Title 18, that a complete profile could be done on this man, and that within a period of thirty days and longer, if necessary, a report could be rendered to you to indicate whether or not in the view of experts this man would benefit by such treatment, such treatment that only could be given if he is treated as a narcotic addict. At worst, the Court could then refuse to impose the sentence based upon that report, but at least the Court would have the benefit of a thorough profile of this man. I beg that the Court consider this sentence. This plea is made earnestly by Mr. Hanesworth, and I am articulating his wishes. He cannot articulate this himself, but he has articulated to me in a simplistic way the fact that he does need help, that he knows he is an addict, and that he wants to try, and I think that is the key.

Thank you, Your Honor.

THE COURT: Mr. Hanesworth, do you have anything you wish to say in your own behalf, or do you wish to present any information in mitigation of sentence?

DEFENDANT HANESWORTH: No.

THE COURT: Does the Government have any comments to make?



MR. WAGNER: No, we do not.

THE COURT: First, I wish to instruct you, Mr. Hanesworth, that you have a right to appeal; that the sentence which will be imposed today constitutes a final judgment of a conviction. Furthermore, if you are without funds, as I believe you are, you have the right to appeal in forma pauperis, without paying any filing fee, and in which case the Court would instruct the Clerk to file a Notice of Appeal in your behalf.

Are you assigned counsel?

MR. RENDA: Yes, Your Honor, I am.

THE COURT: All right.

Do you understand your right to appeal?

DEFENDANT HANESWORTH: Yes.

THE COURT: Are you prepared to continue with the matter and file the appeal?

MR. RENDA: I have the papers ready, Your Honor, but to be candid with the Court, the final determination on the appeal would be discussed after an imposition of sentence.

THE COURT: Don't go that route. I have the papers today. And regardless what the sentence is, later on in his life it would be important to him. And you don't want him to be in the position where he was deprived or neglected to exercise his right to appeal.



All right. I find that he is indigent and that he may file his appeal in forma pauperis.

In connection with the imposition of sentence in your case, Mr. Hanesworth, the principal purpose of the Court in imposing sentence is that of general deterrence, to deter other people from dealing in narcotics in the City of Buffalo. The Court regards the dealing in narcotics a serious and believes that you, as the jury correctly found, knowingly and willfully dealt in it. You did so in a fashion from which no excuse can be found. You have a prior felony conviction in May of 1972 for the sawed-off shotgun. There are some other relatively minor matters on your record, and I don't think there is any use in my detailing it.

The recommendation of the Probation Office is to the effect that no turnabout is foreseen, and the return to the community would only be a return to the drug scene. And that there is no alternative to a recommendation of commitment.

The Court would be inclined to commit you, and it is a matter of deterrence to other people who want to go down to Clark's Club Venus and deal in drugs, and we have to put a stop to it.

I decline to entertain the suggestion made by your counsel that you go into narcotics program. The

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Court finds that you have previously been committed to the NACC Program of the State of New York, at Macedon Park. You were certified as a heroin addict, beginning in 1967, and certified in July of 1970, and you were a patient confined to the Macedon Park facility of the State of New York, and you completed your certification term partly in the hospital and partly as an out-patient. And you claimed at that time, and you claimed in your interview that you had no further problems with drugs except that you were taking the methodone. The Court regards the program at Macedon Park as every bit as good as the Federal programs. And it didn't take you out of the narcotics scene as a dealer, and whether it took you out as a user or not, the Court is in no position to find. I think you having been in one program, and it didn't work for you, and if you are an addict, which I'm not sure you are, it would be inappropriate to commit you again under a comparable Federal program.

The Court sentences you to a term of four years imprisonment, together with a three-year special parole term under Title 21 of the United States Code to begin following the expiration of your term of imprisonment.

Now I will entertain a motion to dismiss No. 186.

MR. WAGNER: If the defendant is going to appeal, the Government is not prepared at this time to



make that motion.

THE COURT: I don't know how you can take that position. In the first place, it was stated at the pre-trial conferences that you would try No. 187, which was filed afterwards and rely on that. I don't know whether Mr. Renda relied on that in that regard or not, but he certainly is in a position wherein his client must claim that he could have relied on it, or would have, in failing to make a motion to consolidate. And I think that having said you would, you are somewhat committed to the defendant and his attorney and to the Court to do it. Otherwise, they conceivably could have moved for consolidation, and then you would have been unable to try Croom in that consolidated case. So I think you made a knowing election there.

I think to suggest that you are keeping the other one in reserve on the thought that the Court of Appeals might send this one back for a new trial is really inappropriate under all the circumstances.

MR. WAGNER: Your Honor, I agree with you. The record is very good, and I do not anticipate reversal, but I can only say the Department of Justice has to authorize us permission to make a motion.

THE COURT: I now find on this record when I was assigned to sit in this District by the Chief Judge

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of the Second Circuit, Chief Judge Kaufman, among the cases that were assigned to me as Indictment No. Cr: 75-186, involving only Hanesworth, and that I held a meeting of counsel prior to trial at that time, and there was discussion as to whether No. 186 should be tried first, as to whether it should be consolidated for trial. And Croom a co-defendant in 187 -- the Government at that time, their position was that they were going to rely on 187, and reliance on this position which the Government took, or at least subsequent to the Government taking that position, Mr. Renda made no motion to consolidate the two, it would be unfair to this defendant to inhibit his right to appeal in No. 187 by holding 186 open as a threat to try that Indictment if he were able to get a reversal on No. 187. Any reversal he would get on No. 187 would simply send it back for a new trial, in any event. Be that as it may, I think because of procedures that have been taking place so far, if you have a motion for the record, Mr. Renda, I think the Court would have to grant it.

MR. RENDA: I would move to dismiss 75-186.

THE COURT: Motion granted.

You are on bail now, aren't you, Mr. Hanesworth?

DEFENDANT HANESWORTH: Yes, sir.

THE COURT: You understand your obligations



under your bail?

DEFENDANT HANESWORTH: Yes, I do.

THE COURT: You know if you fail to be present when required, that that could constitute a separate Federal felony?

DEFENDANT HANESWORTH: Yes.

THE COURT: Is there any reason not to continue him on bail?

MR. WAGNER: Your Honor, I can suggest there is not. He has appeared here as scheduled.

THE COURT: Fine. You are continued on bail pending appeal.

MR. RENDA: Thank you very much, Your Honor.

- - -



REPORTER'S CERTIFICATE

I, A. Jake Jacobson, Official Court Reporter for the United States District Court for the Western District of New York, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared under my direction.

---

A. Jake Jacobson

Dated: January 22, 1977

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UNITED STATES DEPARTMENT OF JUSTICE  
Federal Bureau of Investigation  
Washington, D.C. 20537

CR 75-186

93 184 G

Identification Division

The following FBI record, NUMBER \_\_\_\_\_ is furnished FOR OFFICIAL USE ONLY.

Contributor of Fingerprints	Name and Number	Arrested or Received	Charge	Disposition
Frie Co Pen Alden, N.Y.	Harold Hanesworth #G-61731	5/4/66	VIOL 501.4 VT (DRIV W/O LIC)	30 mos NAC
PD Buffalo NY	Harold Hanesworth #70452	6/30/67	1308 P.L. CRSP	
PD Buffalo NY	Harold Hanesworth Jr. #70452	9/20/68	PL 140.20 D F Burg.3rd P.L.155.30-1E F GL 3rd	No Billed
PD Kenmore NY	Harold Hanesworth #KPD 741	10/13/69	Sc.155.30 GL 3rd CL E Fel Sc.140.20 Burg 3rd CL D fel Sc.220.25 poss Drugs CL C fel	60 mos NAC
PD Buffalo NY	Harold Hanesworth #70452	10/28/69	PL 220.05 Cr poss dang drug 4th	/EXHIBIT "B" (Received (9/10/75 (U.S. Attorney
PD Buffalo NY	Harold Hanesworth #70452	1/11/70	PL 220.05 crim poss dang drug 4th	
PD Buffalo NY	Harold Hanesworth Jr. #70452	2/27/70	PL 220.05 CR Poss Dang Drug 4th	
PD Buffalo NY	Harold Hanesworth #72752	5/15/70	PL 220.15-1-Cr poss dang drug- 4th PL 220.35- Cr sell drug dang 3rd	Pled to attemp 220.15-1 PL & Att. 220.35 PL Indeterminate term up to 60 mos. Narco Addiction Control Center

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UNITED STATES DEPARTMENT OF JUSTICE  
Federal Bureau of Investigation  
Washington, D.C. 20537

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FINGERPRINTS.

Contributor of Fingerprints	Name and Address	Arrested or Received	Charge	Disposition
PD Buffalo NY	Harold Hanesworth Jr. #70452 SID #1197623N	5/8/72	PL 265.05-3 Poss of Weap P.L. 265.05-2 Poss of Weap PL 220.05 CR Poss Dang Drug 6th PL 220.45 CR Poss Hypo Inst.	
Erie Co Pen Aldeny, New York	Harold Hanesworth #G-61731- #SID 1197 623 X	7/28/72	Vio 265.05-6 (Illeg Gun) Vio-220.45 PL (cr.Poss Hypo Inst.)	1 yr. 3 mo. on 2 concurr less 1 day jail
DEA Buffalo, N.Y.	Harold Hanesworth C2-75-X035	8/14/75	heroin-sale	
USM Buffalo NY	Harold Hanesworth 2324 4069	8/14/75	distribute heroin	



U.S. of America vs.  
HAROLD HANESWORTH  
Defendant

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

Docket No. Cr-75-187

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the Presence of the attorney for  
the government the defendant appeared Mo. Day Year  
in person on this date \_\_\_\_\_

\_\_\_\_ Without Counsel However the court advised defendant of  
right to counsel and asked whether  
defendant desired to have counsel  
appointed by the court and the defendant  
thereupon waived assistance of counsel.

X With Counsel James Renda

\_\_\_\_ GUILTY, and the Court being satisfied \_\_\_\_\_ NOLO CONTENDERE  
that there is a factual basis for plea,

X NOT GUILTY

There being a verdict of \_\_\_\_\_ NOT GUILTY, Defendant is discharged  
X GUILTY

Defendant has been convicted as charged of the offenses of  
did knowingly, tentionally, and unlawfully distribute a  
substance containing heroin, a Schedule I Controlled Substance,  
in violation of Title 21 U.S.C., Section 841 (a)(1).

The court asked whether defendant had anything to say why  
judgment should not be pronounced. Because no sufficient cause  
to the contrary was shown, or appeared to the Court, the Court  
adjudged the defendant guilty as charged and convicted and  
ordered that: The defendant is hereby committed to the custody  
of the Attorney General or his authorized representative for  
imprisonment for a period of Four (4) years with Three (3)  
years special parole after serving sentence.

[FILED December 20, 1976  
at \_\_\_\_\_ 00 \_\_\_\_\_ M.  
John K. Adams, Clerk]

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In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The Court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshall or other qualified officer.

Signed by:

  X   U.S. District Judge CHARLES L. BRIEANT,  
CHARLES L. BRIEANT, U.S. District Judge  
(Sitting by Designation)  
Date December 20, 1976.



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

\* \* \* \* \*

THE UNITED STATES OF AMERICA,

Appellee

-vs-

Docket No. 76-1597  
ADMISSION OF SERVICE

HAROLD HANESWORTH,

Appellant

\* \* \* \* \*

Personal Service of the within Brief and Appendix for  
Appellant, Harold Hanesworth, and of the notice (if any)  
hereon endorsed, is admitted this 21st day of March, 1977.

BY: 

FOR RICHARD ARCARA  
UNITED STATES ATTORNEY  
WESTERN DISTRICT OF NEW YORK

DATED: Buffalo, New York  
March 21st, 1977



UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

~~State of New York~~

~~County~~

~~County of~~

Docket No. 76-1597

Index No.

THE UNITED STATES OF AMERICA,

Appellee

-vs-

ADMISSION OF  
SERVICE

Year

HAROLD HANESWORTH,

Appellant

JAMES P. RENDA  
RUNFOLA & BIRZON & RENDA

Attorneys for

Appellant, Harold Hanesworth

Office and Post Office Address  
405 BRISBANE BUILDING  
BUFFALO, NEW YORK 14203  
Phone: 852-4850

Personal Service of the within  
hereon endorsed, is admitted this

day of

and of the notice (if any)

19

.....  
Attorney(s) for

Sir:—Please take notice

Notice of Entry

that an  
within entitled action on the  
in the office of the Clerk of the County of

of which the within is a copy, was duly granted in the  
day of 19, and duly entered  
on the day of 19

To

Attorney(s) for

STATE OF NEW YORK, COUNTY OF

SS.

Initial

☐ Certification  
by Attorney

The undersigned attorney certifies that the within  
has been compared by the undersigned with the original and found to be a true and complete copy.

Initial

☐ Attorney's  
Affirmation

The undersigned, an attorney admitted to practice in the courts of New York State, shows that deponent is

the attorney(s) of record for  
in the within action; that deponent has read the foregoing  
and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein  
stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent  
further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated

STATE OF NEW YORK, COUNTY OF

SS.

Initial

☐ Individual  
Verification

being duly sworn, deposes and says that  
he in this action, that he read the foregoing

and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein  
stated to be alleged on information and belief, and that as to those matters he believes it to be true.

being duly sworn, deposes and says that he is the

of

Initial

☐ Corporate  
Verification

the corporation named in the within entitled action; that he has read the foregoing

and knows the contents thereof; and that the same is true to his own knowledge, except as to the matters therein  
stated to be alleged upon information and belief, and as to those matters he believes it to be true.  
Deponent further says that the reason this verification is made by deponent and not by

is because the said

is a corporation and the grounds of deponent's belief as to all matters in the said  
not stated upon his own knowledge, are investigations which deponent has caused to be made concerning the subject  
matter of this and information acquired by deponent  
in the course of his duties as an officer of said

corporation, and from the books and papers of said corporation

Sworn to before me, this  
day of 19

STATE OF NEW YORK, COUNTY OF

SS.

Affidavit  
☐ of Service  
By Mail

is over 18 years of age and resides at

On 19 deponent served the within

upon  
attorney(s) for in this action, at

the address, designated by said attorney(s) for that purpose  
by depositing a true copy of same enclosed in a post paid properly addressed wrapper, in a post office—official  
depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Affidavit  
☐ of Personal  
Service

On 19 at upon

the  
person so served to be the person mentioned and described in said papers as the  
herein, by delivering a true copy thereof to him personally. Deponent knew the  
therein.

☐ Description

The person served would be described as approximately years of age lbs. ft. in  
male female hair skin eyes other

Sworn to before me, this  
day of 19